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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,511	03/18/2004	Vinod K. Parasher	PARASHER-1	5419

7590 03/07/2005

Connolly Bove Lodge & Hutz LLP  
P.O. Box 2207  
Wilmington, DE 19899-2207

EXAMINER
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KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/803,511

Applicant(s)

PARASHER ET AL.

Examiner

Matthew J Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,764,439 to Schaaf et al.

**In regards to claim 1**, Schaaf et al. disclose a probe vibrating assembly 30 for endoscopic procedures comprising a main body, a spindle 70 in the main body, a drive mechanism 60 for rotating the spindle, a drive member 66 eccentrically mounted to the spindle, a clamp mechanism 75, the eccentrically mounted drive member being secured to the clamp mechanism for moving the clamp mechanism back and forth in accordance with the movement of the eccentric drive member, a probe 35 clamped in the clamp mechanism, a medical scope 25, the probe mounted to the medical scope, and the probe extending outwardly beyond the medical scope (see Figs. 1 and 6a).

**In regards to claim 2**, Schaaf et al. disclose a probe vibrating assembly 1 wherein the probe is a guide wire (see Col. 9, Lines 65-67).

**In regards to claim 3**, Schaaf et al. disclose a probe vibrating assembly including a catheter 34 mounted to the medical scope and extending through the

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medical scope, and the guide wire 35 being disposed in the catheter (see Col. 9, Lines 59-64).

**In regards to claim 4**, Schaaf et al. disclose a probe vibrating assembly wherein the probe is a flexible needle terminating in a knife edge (see Fig 3a).

**In regards to claims 5-6**, Schaaf et al. disclose a probe vibrating assembly including a cylinder clamped by the clamp mechanism, a plunger telescopically mounted in the cylinder, and the needle extending through the cylinder and the plunger. Schaaf et al. teach of two embodiments shown in Figs. 4G-H wherein a hollow cylindrical needle head piece 80 and 81 through which tissue particles can be surgically suctioned off by means not shown (see Col. 8, Lines 9-14). It is well known in the art to use aspiration structures, (see Col. 4, Lines 44-46), to help with tissue biopsy, comprising a plunger and cylinder through which the tissue is extracted.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S Patent No. 5,312,418 to Bonnet

U.S Patent No. 6,817,973 to Merrill et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

*MJK*

3/1/05

*B. M. Flanagan*  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER